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No. 09-327

Supreme Court, U.S.
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In The

Supreme Court of the United States

FRANCIS J. SAMPSON, JR., et al.,

Petitioners,

v.

SUN LIFE ASSURANCE COMPANY OF CANADA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

PETITION FOR A WRIT OF CERTIORARI

FRANCIS J. SAMPSON, JR.
JAMES SAMPSON
GRETCHEN SAMPSON
JEFFREY SAMPSON
85 Heritage Lane
Duxbury, MA 02332
781-934-2353

Pro Se Petitioners

QUESTIONS PRESENTED

I. Whether it is a violation of a litigant's right to due process for a District Court judge to hear oral argument on a Motion for Judgment on the Pleadings (pursuant to Rule 12(c) of the Federal Rules of Civil Procedure) – including the Plaintiff's request for an award of attorneys' fees – at a *scheduling conference*, where that Motion for Judgment on the Pleadings had been rendered moot by the Defendant's subsequent filing (with leave of the Court) of his Answer, which Answer had placed several material facts squarely in dispute. Where counsel for the Defendant had no reason to believe that such motion was still pending – indeed, when it was, in fact, *no longer* pending, given the various issues raised in the Defendant's Answer, thus rendering a Motion for Judgment on the Pleadings entirely premature – is that Defendant's right to due process violated where: (1) his counsel is nevertheless required to argue, at a scheduling conference and without notice or an opportunity to prepare, the *merits* of Plaintiff's dispositive motion; and (2) the proceedings are then closed, without opportunity for counsel to brief the central issues in the litigation.

II. Whether it is an abuse of the interpleader process, as provided for under federal statute and the federal rules of civil procedure, for a Plaintiff to file an action for interpleader where: (a) its supposed fear of having to face multiple claimants to a single fund

QUESTIONS PRESENTED – Continued

arises from its own dereliction (here, Sun Life's grossly ambiguous designation of beneficiary form); (b) it proffers to the persons it perceives as possible multiple claimants a grossly overbroad release form, and insists on the execution of that form by all of those persons before it will declare the matter resolved; and/or (c) where the primary issue (or even the *sole* issue) remaining between the parties is not the proper payee of some fund held by the Plaintiff, but rather Plaintiff's attempt to recoup attorney's fees it claims to have incurred in pre-litigation negotiations between the parties.

PARTIES TO THE PROCEEDING

The Petitioners are:

Francis J. Sampson, Jr., widower of the late
Dianne Sampson and their children
James Sampson
Gretchen Sampson
Jeffrey Sampson

The Respondent is:

SUN LIFE ASSURANCE COMPANY
OF CANADA (U.S.)

Their attorneys:

Kristina H. Allaire, Esq.
Joan O. Vorster, Esq.,
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The opinions are not reported.

The opinion of the Court of Appeals affirming the judgment of the District Court is attached at App. 1.

The judgment of the District Court is attached at App. 9.

The denial of the petition for rehearing is attached at App. 21.

GROUNDS FOR JURISDICTION

The judgment of the District Court was entered September 14, 2007.

The judgment of the Court of Appeals was entered on February 17, 2009.

The denial of the petition for rehearing was entered on April 22, 2009. The Court has jurisdiction pursuant to 28 U.S.C. § 1254.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

28 U.S.C. § 1254

28 U.S.C. § 1335

28 U.S.C. §§ 1001, et seq.

U.S. Constitution, 5th Amendment:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor ***be deprived of life, liberty, or property, without due process of law***; nor shall private property be taken for public use, without just compensation.

STATEMENT

I recognize that you ladies and gentlemen who review petitions such as this one are accustomed to vast amounts of sophisticated (and expensive) legal research, giving you case after case on point, but for this matter, I respectfully ask you to rough it a bit from time to time. Expensive and sophisticated legal research has not helped me thus far, so I see little likelihood of it helping me here. And quite frankly, lawyers I talked to about preparing this petition tell me that in spite of them believing strongly in my position, the Supreme Court accepts so few cases that they could not in good conscience take my money to prepare this filing. "You will get laughed out the door" and "Your matter just isn't important enough to

them" were the phrases they used. I have more faith in you than that.

Please allow me to state my case: The constitutional issue for this Honorable Court to decide is whether or not I am entitled to due process in an ERISA case. If not, you can reject this petition here and now – no need for you to proceed any further. If yes, then this Honorable Court must decide whether it is proper for a United States District Court judge to hear oral argument on a Motion for Judgment on the Pleadings – including the Plaintiff's request, as contained in that motion, for an award of its attorneys' fees – at a *scheduling conference*, where that Motion for Judgment on the Pleadings had been rendered moot by the Defendant's subsequent filing (with leave of the Court) of his Answer, which Answer had placed several material facts squarely in dispute. Where counsel for the Defendant had no reason to believe that such motion was still pending – indeed, when it was, in fact, *no longer* pending, given the various issues raised in the Defendant's Answer, thus rendering a Motion for Judgment on the Pleadings entirely premature – is that Defendant's right to due process violated where his counsel is nevertheless required to argue, at a scheduling conference and without notice or an opportunity to prepare, the *merits* of Plaintiff's dispositive motion?

The First Circuit Court of Appeals apparently failed to perceive – or was simply unconcerned with – the violation of due process inherent in such a procedural irregularity. It is because of the First

Circuit's failure to correct this procedural irregularity, and the consequent deprivation of this Petitioner's right to due process, that impels me to seek redress from this Honorable Court.

First, some background: This case emanated from an uncertainty over who was the proper recipient of the proceeds of a life insurance policy, which uncertainty arose from a grossly ambiguous designation of beneficiary form created by Sun Life Assurance Company of Canada, the Plaintiff in the trial court, below. Because this life insurance policy was a group benefit provided by my late wife's employer to its work force, the dispute as to who was the intended and proper beneficiary under the policy is governed by ERISA (29 U.S.C. §§ 1001, et seq.), which meant that this matter is subject to the jurisdiction of the federal courts. I am sure there is some manner by which a lawyer would be expected to quote chapter and verse from some law, but here is where I would ask you to rough it.

A simple uncertainty as to who is the proper beneficiary of a life insurance policy is not, in and of itself, worthy of a federal lawsuit. Given that all potential beneficiaries – namely, myself and my children (who were minors when the policy was issued, but who were all grown adults when my wife died and this dispute arose) – were unanimous as to who was the intended beneficiary of these insurance proceeds (i.e., myself), the matter should have been easily resolvable through the negotiation, with Sun Life, of a proper release (as was done). What we

would *not* do, however, is agree to pay this insurance company's outrageous demand for the $3,906.00 it supposedly incurred in attorney's fees in the course of negotiating a release that was appropriately limited in scope and which would resolve a dispute which arose from ambiguities in this company's *own* designation of beneficiary form. A negotiation that only required a few hours of my lawyer's time. Under the guise of resolving a long-since resolved dispute over the proper beneficiary of these insurance proceeds, Sun Life then proceeded to file an interpleader action against me and my family, in an attempt to recover its attorney's fees. Having no legitimate basis for filing an interpleader action, Sun Life simply lied, denying that we had reached a settlement on the release language, and claiming that the members of my family could not agree among ourselves as to the appropriate beneficiary of the insurance proceeds. All this was done as a mere pretext, in order to collect an outrageous and unjustified legal fee. I realize that this factual background is an area with which appellate courts typically do not concern themselves, and that they are quite reluctant to second-guess factual determinations made by the trial courts, but how can the District Court's ruling, or its factual determinations, be given any deference when it refused to give my counsel any meaningful opportunity to prepare and present, at a properly noticed oral argument, my side of the case? I fought a war for this country, and I cannot even get a hearing?

As it turned out, Sun Life's efforts to bring the interpleader action were no more competent than their designation of beneficiary form. They initially filed their action in state court, even though this was an ERISA matter. And I am supposed to pay their legal fees for filing in the wrong court? Still, not a matter for the Supreme Court. Sun Life finally stumbled into Federal court, and got lucky. There, it found a Court – the U.S. District Court in Boston – which apparently was unable to see through Sun Life's subterfuge, and its clear abuse of the interpleader process. The U.S. District Court failed utterly to recognize that this was not simply some garden variety case where an insurance company files an interpleader action to quell a dispute among competing claimants to some insurance proceeds. Rather, it was a bald attempt by a massive life insurance company to stick a little guy with the legal fees it incurred in cleaning up a mess it created *itself* – first, with a poorly drafted, ambiguous designation of beneficiary form, and second, with a boilerplate release form that was absurdly broad in its scope. The Court could not seem to grasp – and barely even to consider – that by the time Sun Life had filed its interpleader action in federal court, any alleged dispute over the proper beneficiary of these insurance proceeds had long since been resolved, and the only issue dividing the parties was whether or not Sun Life could stick me with their legal fees. The whole matter seemed a mere triviality to the U.S. District Court in Boston.

I can tell you, it is *not* trivial to me, nor to my children, nor would it be to my late wife who toiled away at a menial, thankless job for 17 years just to provide as best she could for her family. So after hiring one lawyer, and then another, and enduring endless defaults – gritting my teeth all the way – we finally got a scheduling hearing. *Here* is where the Constitutional issues come into play:

Sun Life eventually filed a Motion for Judgment on the Pleadings, under Federal Rule of Civil Procedure 12(c), due to my attorneys' failure to file an Answer in a timely manner. My attorneys then got their act together, and filed, with leave of the Court, an Answer to the Plaintiff's Complaint. Meanwhile, there was a scheduling conference coming up, and the boilerplate language in the order giving notice of the scheduling conference stated that counsel should be prepared, at the scheduling conference, to argue all pending motions. Knowing that a Rule 12(c) motion is untimely when there are material issues of fact still outstanding, and that they had raised, in their Answer, *numerous* material issues of fact, my attorneys properly believed that the Plaintiff's Motion for Judgment on the Pleadings – which was predicated on the lack of an Answer from our side – was no longer pending as of the time of this scheduling conference. How could it be? There were now many material issues of fact for the Court to resolve, given our filing of an Answer, and this was only a scheduling conference. *See Doe v. United States*, 419 F.3d 1058 (9th Cir. 2005) (A Rule 12(c) motion is premature

if made before an answer is filed.); *See also Aponte-Torres v. University of Puerto Rico*, 445 F.3d 50, 54 (1st Cir. 2006) (When considering a Rule 12(c) motion, the Court does not resolve contested facts.).

Accordingly, my attorneys prepared for, and came to discuss, routine scheduling matters at this conference. And yet, the Court ordered my attorneys – who were caught entirely unaware, through no fault of their own – to argue, at this scheduling conference, the *merits* of the Plaintiff's Motion for Judgment on the Pleadings, including the crucial issue of attorneys' fees. When the parties could not agree, at this scheduling conference, on the issue of attorneys' fees, the Court instructed them to confer further on this issue, and that if they could not agree, that he would then rule on the matter *without further proceedings*. When no such agreement was forthcoming – indeed, this entire case boiled down to a dispute over attorney's fees, and no agreement on this issue was ever remotely possible – the Court then ruled in Plaintiff's favor, without ever affording counsel for the Defendant a meaningful opportunity to prepare and argue the merits of his case on this central issue, either via brief or via oral argument. If this does not constitute a violation of due process, then what does?

It is hard for me to understand the First Circuit Court of Appeals. They, too, denied me the opportunity for an oral argument. They got about as expensive and sophisticated a legal brief as could be. It would make any law professor proud. But, it made

a huge assumption. It assumed that the Court would duly consider it. Their decision implies otherwise, as it was blatantly wrong, not supported by the record, and did not address most of the issues raised in our appeal. Where is the due process there? Then there is the matter of a petition for rehearing. Upon staring at yet another default, I petitioned the Court of Appeals, *pro se*, for an extension of time in order to hire new counsel. They granted it. That is the only ruling that went in my favor. Shortly afterwards, however, the Court summarily denied my petition for rehearing without even the slightest explanation of its rationale or reasoning. Another expensive sophisticated legal brief, denied without even the courtesy of an opinion – no explanation, no nothing. They couldn't even tell me why I lost? Is that more due process?

REASONS FOR GRANTING THE PETITION

The granting of this Petition would allow this Honorable Court to clarify for the federal courts and the litigants who appear before them what does and does not constitute due process when trial courts are weighing dispositive motions. In particular, it can provide guidance to lower courts as to what circumstances, if any, are proper for a trial court to use a mere scheduling conference to hear oral argument on a motion for judgment on the pleadings (or some other dispositive motion), and as to whether the filing of an Answer (with leave of the trial court) – which Answer raises various issues of material fact –

renders moot, or at least premature, any dispositive motion then pending before the Court. Finally, the granting of this petition would allow this Honorable Court to address the proper purpose and scope of the interpleader process, as provided for under both federal statute (28 U.S.C. § 1335) and the federal rules of civil procedure (Fed. R. Civ. P. 22) – in particular, whether it is an abuse of that process for a Plaintiff to file an action for interpleader where: (a) its supposed fear of having to face multiple claimants to a single fund arises from its own dereliction (here, Sun Life's grossly ambiguous designation of beneficiary form); (b) it proffers to the persons it perceives as possible multiple claimants a grossly overbroad release form, and insists on the execution of that form by all of those persons before it will declare the matter resolved; and/or (c) where the primary issue (or even the *sole* issue) remaining between the parties is not the proper payee of some fund held by the Plaintiff, but rather Plaintiff's attempt to recoup attorney's fees it claims to have incurred in pre-litigation negotiations between the parties.

This Honorable Court should grant a Writ of Certiorari in this matter because it simply cannot allow the lower federal courts to exchange due process for expediency. This is the only Court that can undo a substantial injustice and restore the proceeds of the late Mrs. Sampson's life insurance policy to her family rather than allowing a large insurance company and its lawyers to profit from their incompetence and unscrupulousness.

I. THE COURT OF APPEALS ERRED IN ITS CONCLUSIONS

The First Circuit Court of Appeals apparently failed to perceive – or simply was unconcerned with – the violation of due process inherent in the procedural irregularities described above.

II. REVIEW IS NEEDED

To ensure that due process applies to everybody.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

FRANCIS J. SAMPSON, JR.
JAMES SAMPSON
GRETCHEN SAMPSON
JEFFREY SAMPSON
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781-934-2353
Pro Se Petitioners

United States Court of Appeals
For the First Circuit

No. 07-2647

SUN LIFE ASSURANCE COMPANY OF CANADA,

Plaintiff, Appellee,

v.

FRANCIS J. SAMPSON, JR.,

Defendant, Appellant,

GRETCHEN C. SAMPSON; JAMES F. SAMPSON; JEFFREY F. SAMPSON,

Defendants.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Nathaniel M. Gorton, *U.S. District Judge*]

Before

Lynch, *Chief Judge*,
Boudin and Lipez, *Circuit Judges*.

Edgar L. Kelley on brief for appellant.

Kristina H. Allaire, Joan O. Vorster, and *Mirick, O'Connell, DeMallie & Lougee, LLP* on brief for appellee.

February 12, 2009

LYNCH, *Chief Judge.* Sun Life Assurance Company of Canada filed this interpleader action in August 2006, in order to resolve the allocation to beneficiaries of a $48,000 life insurance policy on Dianne Sampson, who died on December 26, 2005. *See* 28 U.S.C. § 1335; Fed. R. Civ. P. 22.

Dianne Sampson initially signed a policy enrollment form designating her husband, Francis, as the primary beneficiary, but eleven days later executed a new form designating her husband and her three children, Gretchen, James, and Jeffrey, as primary beneficiaries. This change created uncertainty as to whether the number of intended beneficiaries was one or four.

After repeatedly trying to resolve the matter by obtaining releases from the children that would have allowed for payment of the entire benefit to Francis Sampson, the insurer filed this interpleader suit and paid the relevant undistributed proceeds, $36,000, into the court. Once the action was brought against them, all four Sampsons ignored the suit for ten months, never filing an answer or responses to Sun Life's motions for entry of default. Francis did not appear until May 22, 2007 when he filed a motion to remove the default; his children never filed an answer or an appearance.

Francis Sampson's appeal is from the district court's September 14, 2007 order awarding Sun Life

$8668, its attorneys' fees and costs for the interpleader action. Sampson also appeals the district court's subsequent denial of his motion to alter the judgment. The district court later amended its award to include an additional $7236, the attorneys' fees and costs incurred by Sun Life in responding to Sampson's post-hearing filings. This appeal concerns only the propriety of the district court's initial award.

The parties agree that the court had the power to award costs and attorneys' fees. While neither Rule 22 nor the interpleader statute, 28 U.S.C. § 1335, refers to costs or attorneys' fees, such powers were part of the historic equity powers of the court in interpleader actions, and have long been recognized under both the Federal Rules and the statute. *See* 7 Wright, Miller & Kane, *Federal Practice and Procedure* § 1719, at 674 (3d ed. 2001). In addition, the court had the power under the interpleader statute to "make all appropriate orders to enforce its judgment." 28 U.S.C. § 2361.

It is settled that "[a] federal court has discretion to award costs and counsel fees to the stakeholder in an interpleader action . . . whenever it is fair and equitable to do so." 7 Wright, Miller & Kane, *supra,* § 1719, at 675.

> The test for awarding fees and costs is a typical equitable one that is very similar to the standard used to determine whether interpleader relief ought to be granted – should the interpleading party be required to assume the risk of multiplicity of actions and

> erroneous election. If not, then the stakeholder should be made whole. The test is not satisfied if the stakeholder has contributed to the need for interpleader by acting in bad faith or by unduly delaying in seeking relief.

Id. at 682 (footnotes omitted); *see also Septembertide Publ'g, B.V. v. Stein & Day, Inc.*, 884 F.2d 675, 683 (2d Cir. 1989); *Ferber Co. v. Ondrick*, 310 F.2d 462, 467 (1st Cir. 1962) (recognizing that fees in an interpleader action are "usually awarded . . . to compensate a totally disinterested stakeholder who [has] been . . . subjected to conflicting claims though no fault of his own"). That exercise of equitable power is reviewed by an appellate court for abuse of discretion. *Aaron v. Mahl*, 550 F.3d 659, 667 (7th Cir. 2008); *cf. Mullane v. Chambers*, 333 F.3d 322, 338 (1st Cir. 2003) (reviewing an attorneys' fee award made under the district court's inherent equitable power to award fees for abuse of discretion).

Francis Sampson contends that the award was an abuse of discretion because the insurer acted in bad faith in filing the interpleader action in federal court.[1] His argument is that a disagreement over the language of the releases to be given upon payment had already been resolved, that there was no need to file suit, and that Sun Life's reason for suing was that

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[1] Sun Life originally filed an interpleader action in state court on June 7, 2006. Realizing that the case was subject to ERISA, Sun Life voluntarily dismissed the state case and refiled in federal court.

it wanted the beneficiaries to pay for the litigation costs and fees it had incurred for the state court action. Sampson attempts to fit this case into two categories where the interpleading party is not usually allowed fees: (1) where the party acts in bad faith; and/or (2) where the interpleader is not disinterested, but benefits (beyond resolution of the issue) from the litigation. *See Ferber,* 310 F.2d at 467 (upholding the denial of fees where the "great bulk" of a party's efforts were devoted to addressing a counter-claim as to which it was "in no way disinterested"); *First Interstate Bank of Or., N.A. v. United States,* 891 F.Supp. 543, 548 (D. Or. 1995) (citing *Schirmer Stevedoring Co. v. Seaboard Stevedoring Corp.,* 306 F.2d 188, 194-95 (9th Cir. 1962)) (noting that courts "routinely" award fees to a disinterested stakeholder "absent a showing of bad faith"); *see also generally* 7 Wright, Miller & Kane, *supra,* § 1719, at 684-86.

We start with the court's stated reason for the award. The court said that Sun Life brought the interpleader action after the three children had repeatedly refused to give it signed releases. The court found that Sun Life reasonably perceived a dispute among the potential beneficiaries because they were unwilling to sign the releases, raising the inference that the children would not disclaim their potential shares. It was not until the children attached affidavits to Francis Sampson's opposition memorandum on August 9, 2007 to Sun Life's motion for judgment on the pleadings that the children

disclaimed any interest in the insurance proceeds. The court held:

> This [concession] is, however, "too little, too late" because 1) the insurer attempted to resolve this matter without litigation, 2) Francis and the children refused to sign the release proposed by Sun Life and 3) none of the children has ever filed a responsive pleading in this case, which has now been pending for nearly one year. The motion for attorneys' fees and costs will, therefore, be allowed.

On appeal, Francis Sampson argues that there were two reasons the court erred in awarding fees.[2] He says that the interpleader action itself was improper because at the time the suit was filed (1) there were no competing claims to the insurance

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[2] The record directly refutes Sampson's procedural argument that he was not given a fair opportunity to respond to the fees request. Sampson argues that he was "ambushed" at the August 3, 2007 scheduling conference when the district court, to his surprise, heard argument on Sun Life's motion for attorneys' fees. Yet the district court made clear in advance that it would hear the parties' arguments on the fees issue at that scheduling conference. Indeed, the district court's notice of the scheduling conference stated (in bold, underlined font): "Counsel should be prepared to argue any pending motions." The district court heard Sampson's argument regarding the award of fees at the scheduling conference and gave the parties a week to settle the case before issuing its ruling. And Sampson filed an opposition to Sun Life's motion for fees on August 9, 2007, which the district court acknowledged and considered in its September 10, 2007 memorandum and order awarding fees to Sun Life.

proceeds and (2) all issues associated with the releases to the insurer had been resolved. But that is not what he argued to the district court, where he did not challenge Sun Life's assertion that a dispute existed between the beneficiaries in his untimely answer or oppose the entry of judgment in favor of Sun Life. Instead, Sampson argued to the district court that an award of fees was improper because Sun Life was not a disinterested stakeholder, having created a dispute over the scope of the proposed releases. Sampson has waived the argument he now makes, and there was no abuse of discretion in the court's resolution of the issue presented to it.

Even if Sampson had not waived the argument, the district court committed no error in inferring that a dispute existed between the beneficiaries from their refusal to sign releases and did not abuse its discretion in awarding fees. To the extent Sampson is now arguing that the release issue had been resolved before the federal interpleader action had been filed, the record refutes this assertion. On June 28, 2006, Sampson's attorney merely proposed language for the releases that he would present to his client if Sun Life found it acceptable. Sun Life never agreed to this language, and the record does not indicate that Sampson himself ever approved the proposed language. Indeed, the next communication Sun Life received from Sampson's attorney was a notice that he was no longer representing Sampson. No releases were ever signed, and the issue was plainly not

resolved before Sun Life brought this federal interpleader action.

We *affirm*. Costs are awarded to Sun Life.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SUN LIFE ASSURANCE COMPANY OF CANADA, Plaintiff V. FRANCIS J. SAMPSON, JR., GRETCHEN C. SAMPSON, JAMES F. SAMPSON, AND JEFFREY F. SAMPSON, Defendants	CIVIL ACTION NO. 06-11511-NMG

ORDER

In accordance with the Court's Order dated September 7, 2007 granting Sun Life Assurance Company of Canada's ("Sun Life") Motion for Judgment on the Pleadings and for Attorneys' Fees, it is hereby ordered that $8,668.00 of the funds being held by the Registry of the Court be released to Sun Life. A check in the amount of $8,668.00 made payable to the Sun Life Assurance Company of Canada shall be mailed to Sun Life's attorney of record in this case, Joan O. Vorster, Esq., Mirick, O'Connell, DeMallie & Lougee, LLP, 100 Front Street, Worcester, MA 01608-1477. Any additional monies that remain as deposited by, or as a result of the deposit by, the Sun Life Company of Canada, shall remain on deposit with the Registry of

the Court until such time as this Court determines the rights of the remaining parties to such monies.

By Order,

/s/ Nathanial M. Gorton
Judge Nathanial M. Gorton

Dated: Sept. 14, 2007

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Sun Life Assurance,
Plaintiff

V.

Francis J. Simpson, Jr., et al.
Defendant

CIVIL ACTION
NO. 06-11511-NMG

JUDGMENT

Gorton D. J.

In accordance with the Court's Memorandum and Order dated 9/7/07 granting plaintiff's motion for judgment on the pleadings in the above-entitled action, it is hereby ORDERED:

Judgment for the Plaintiff

By the Court,

9/11/07
Date

/s/ Craig J. Nicewicz
Deputy Clerk

United States District Court
District of Massachusetts

SUN LIFE ASSURANCE COMPANY OF CANADA (U.S.), Plaintiff,	
v.	
FRANCIS J. SAMPSON, JR., GRETCHEN C. SAMPSON, JAMES F. SAMPSON and JEFFREY F. SAMPSON, Defendants.	**Civil Action No. 06-11511-NMG**

MEMORANDUM & ORDER

GORTON, J.

This is an action for interpleader in which the plaintiff, an insurer, has filed a motion for judgment on the pleadings and for attorneys' fees. The motion is opposed with respect to the request for fees and is resolved as follows.

I. Background

In August, 2006, plaintiff Sun Life Assurance Company of Canada ("Sun Life") filed a complaint for interpleader against Francis J. Sampson, Jr. ("Francis"), Gretchen C. Sampson ("Gretchen"), James F. Sampson ("James") and Jeffrey F. Sampson ("Jeffrey") (collectively, "the defendants"). An amended complaint was filed in September, 2006. The case

concerns the distribution of the proceeds of a life insurance policy.

A. Factual Background

In the amended complaint, Sun Life alleges that the four defendants are all primary beneficiaries under a life insurance policy of the late Dianne Sampson ("Dianne"). Sun Life contends that on December 2, 1991, Dianne completed an enrollment form designating her husband, Francis, as the primary beneficiary and her three children, Gretchen, James and Jeffrey as contingent beneficiaries under the policy. Several days later, however, Dianne completed a new enrollment form designating all four defendants as primary beneficiaries.

Dianne died on December 26, 2005. The plaintiff acknowledges that it owes $48,000 under the policy to someone. The dispute relates to whether the first or the second enrollment card signed by Dianne is controlling and, therefore, whether the children are contingent or primary beneficiaries. According to Francis, his wife intended him to be the sole primary beneficiary and such an arrangement would be consistent with the manner in which Dianne bequeathed her other assets.

Prior to commencement of this action, Francis told Sun Life that his children agreed that he was the sole primary beneficiary under the policy. Before distributing the funds, however, Sun Life requested

that Francis and his three children sign a release indicating their assent to the designation of Francis as the sole primary beneficiary. Francis refused to sign the release on the grounds that, in his opinion, its terms were overbroad. He also implied that his children would refuse to sign the release. Without signed releases from all four potential beneficiaries, Sun Life refused to disburse the entire amount to Francis and instead issued him a check for $12,000, representing the minimum amount he is owed under the policy. The company then brought this interpleader action and deposited the contested $36,000 with the Court.

B. Procedural History

In August, 2006, the plaintiff filed a motion (which was ultimately allowed) to deposit the proceeds of Dianne's life insurance policy into Court. On December 21, 2006, no responsive pleading having been filed, the plaintiff filed a motion for entry of default with respect to the defendants. The plaintiff subsequently filed a motion for judgment on the pleadings and attorneys' fees on February 7, 2007.

On March 16, 2007, the Court allowed Sun Life's motion for entry of default. On May 22, 2007, defendant Francis filed a motion to remove the default and for extension of time to respond which was allowed by the Court, although the default was not removed. He subsequently filed an answer to the amended complaint on June 5, 2007 but his children

have not answered nor has any attorney filed an appearance on their behalf.

A status conference was held in this matter on August 3, 2007, at which the pending motion for judgment on the pleadings and attorneys' fees was argued. Defense counsel informed the Court that, in his opinion, the motion had been rendered moot by the filing of an answer by the defendant, Francis. Neither party disputed that Sun Life had fulfilled its obligations under Dianne's policy by depositing the proceeds with the Court and the only remaining dispute is whether Sun Life is entitled to an award of attorneys' fees for having to prosecute what the plaintiff asserts is unnecessary litigation.

At the conclusion of the hearing, the Court informed the parties that it was inclined to allow the motion for judgment on the pleadings and directed them to notify the Court of any settlement before Friday, August 10, 2007, in default of which the Court would rule on the pending motion. Counsel expressed a willingness to negotiate a settlement immediately following the hearing but, on Thursday, August 9, 2007, the defendant filed an opposition to the plaintiff's motion for judgment on the pleadings and for the award of attorneys' fees. The plaintiff promptly filed a motion to strike the defendant's opposition and a motion for leave to file a reply memorandum. Attempts at settlement having obviously failed, the Court will resolve the pending motions as follows.

II. Analysis

A. Motion for Judgment on the Pleadings

In its motion for judgment on the pleadings, Sun Life seeks to be discharged from all further liability. In his opposition filed on August 9, 2007, the defendant Francis does not dispute that judgment should be entered in favor of Sun Life. To that extent, therefore, the plaintiff's motion will be allowed.

The remaining dispute relates to the plaintiff's request for attorneys' fees. Its counsel contends that it should be reimbursed for $7,660 in fees and $1,008 in costs associated with this litigation. In interpleader actions a court will normally award fees from the proceeds where the party seeking fees 1) is a disinterested stakeholder, 2) has conceded liability, 3) has deposited the funds into court and 4) has sought a discharge from liability. *See Septembertide Publ'g* v. *Stein & Day, Inc.*, 884 F.2d 675, 683 (2d. Cir. 1989). Sun Life contends that it meets all four criteria and that it should be awarded fees and costs. The award of fees and costs is not specifically provided for by statute but is within the discretion of the Court, guided by equitable principles. *See id.*

In opposition, Francis asserts that Sun Life is not a disinterested stakeholder because the interpleader action was not brought as a result of a dispute among the potential beneficiaries but rather is a dispute between Sun Life and the potential beneficiaries over the scope of the release proposed by Sun Life. From the perspective of Sun Life, however, there is a

dispute among potential beneficiaries because they are unwilling to sign a release for the full distribution of the proceeds. That reticence raises a reasonable inference that the children are not willing to disclaim their potential shares of the proceeds. The interpleader action was, therefore, necessary for Sun Life to avoid liability should any of Dianne's children subsequently challenge its distribution to Francis.

Affidavits from all four beneficiaries are attached to the opposition memorandum of Francis in which they collectively agree that the full amount of the proceeds should be distributed to Francis. This is, however, "too little, too late" because 1) the insurer attempted to resolve this matter without litigation, 2) Francis and the children refused to sign the release proposed by Sun Life and 3) none of the children has ever filed a responsive pleading in this case, which has now been pending for nearly one year. The motion for attorneys' fees and costs will, therefore, be allowed.

B. Motion to Strike

On Thursday, August 9, 2007, Sun Life filed a motion to strike Francis's opposition that had been filed earlier in the same day. Sun Life also sought leave to file a reply memorandum. Because the Court will allow Sun Life's motion for judgment on the pleadings and for attorneys' fees and costs, the motion will be denied as moot.

ORDER

The plaintiff's motion for judgment on the pleadings and for attorneys' fees and costs (Docket No. 14) is **ALLOWED**. An award in the amount of $7,660 in fees and $1,008 in costs shall be paid to the plaintiff from the proceeds. The plaintiff's motion to strike and for leave to file a reply memorandum (Docket No. 28) is **DENIED AS MOOT**.

So ordered.

/s/ Nathaniel M. Gorton
Nathaniel M. Gorton
United States District Judge

Dated September 7, 2007

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SUN LIFE ASSURANCE COMPANY OF CANADA, Plaintiff V FRANCIS J. SAMPSON, JR., et al Defendant	CIVIL ACTION NO. 06-11511-NMG

AMENDED JUDGMENT

Gorton D.J.

In accordance with the Court's Order dated May 13, 2008, granting the Plaintiff's Motion to Amend the Judgment Amount in the above-entitled action, it is hereby ORDERED:

That the Judgment in favor of the Plaintiff entered by the Court on September 11, 2007 be amended to provide for an award of the attorneys fees and costs requested by the Plaintiff in its Motion to Amend the Judgment Amount filed on February 13, 2008.

Dated: 5/14/08

By the Court,

/s/ [Illegible], deputy clerk

1:06-cv-11511-NMG Sun Life Assurance Company of Canada, (U.S.) v. Sampson et al
Nathaniel M. Gorton, presiding

History

* * *

Filed: 02/07/2008 Order on Motion to Alter Judgment

Entered: 02/08/2008

Docket Text: Judge Nathaniel M. Gorton: Electronic ORDER entered denying [35] Motion to Alter Judgment (Nicewicz, Craig)

* * *

Filed & Entered: 05/13/2008 Order on Motion to Amend

Docket Text: Judge Nathaniel M. Gorton: Electronic ORDER entered granting [44] Motion to Amend (Nicewicz, Craig)

* * *

United States Court of Appeals
For the First Circuit

No. 07-2647

SUN LIFE ASSURANCE
COMPANY OF CANADA, (U.S.)

Plaintiff-Appellee

v.

FRANCIS J. SAMPSON, JR.

Defendant-Appellant

GRETCHEN C. SAMPSON; JAMES F. SAMPSON;
JEFFREY F. SAMPSON

Defendants

Before

Lynch, *Chief Judge*,
Boudin and Lipez, *Circuit Judges*.

ORDER OF COURT
Entered: **April 22, 2009**

Appellant Francis J. Sampson's Petition for Rehearing is *denied*.

By the Court:

/s/ Richard Cushing Donovan, Clerk.

cc:
Kristina H. Allaire
John S. Keating
Edgar L. Kelley
Jessica H. Munyon
Karl F. Stammen
Joan O. Vorster

OPPOSITION BRIEF

(2)

No. 09-327

Supreme Court, U.S.
FILED
OCT 16 2009
OFFICE OF THE CLERK

In The
Supreme Court of the United States

FRANCIS J. SAMPSON, JR.,

Petitioner,

v.

SUN LIFE ASSURANCE COMPANY OF CANADA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION

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QUESTIONS PRESENTED

Mr. Sampson's identification of the issues for review is misstated. The questions that are presented by this Petition, taking into account the facts and circumstances of this case, are more accurately stated as follows:

1. Whether there is any basis for granting certiorari when the petitioner (a) fails to articulate how this case fits into any of the criteria for granting certiorari; (b) asserts errors that consist only of the lower court's allegedly erroneous factual findings; and (c) is simply dissatisfied with the lower court's decision.

2. Whether the First Circuit was correct in finding no procedural error by the District Court in considering Sun Life's Motion for Judgment on the Pleadings and Attorneys Fees (after Mr. Sampson had filed an answer) where (a) Mr. Sampson's answer did not render Sun Life's motion moot; (b) Mr. Sampson was on notice that Sun Life's motion was pending and that the District Court would hear all pending motions at the Scheduling Conference held pursuant to D. Mass. Loc. R. 16 ("Scheduling Conference"); (c) Mr. Sampson was represented by two attorneys at the Scheduling Conference who did not object to the District Court's authority to hear the motion on oral argument; and (d) Mr. Sampson filed a late opposition to Sun Life's motion, which the District Court took into consideration before rendering its decision.

QUESTIONS PRESENTED – Continued

3. Whether the First Circuit was correct in finding that the District Court did not abuse its discretion when it determined that Sun Life was a disinterested stakeholder presented with a legitimate dispute over the appropriate beneficiaries to the policy proceeds where: (a) Sun Life attempted for months to resolve the matter with the beneficiaries without litigation; (b) Mr. Sampson's children did not respond to Sun Life's requests; (c) they refused to sign a release to the policy proceeds; and (d) no agreement was reached with respect to a release before Sun Life brought this interpleader action in federal court.

PARTIES TO THE PROCEEDINGS

The Petitioner is: Francis J. Sampson, Jr.

The Respondent is: Sun Life Assurance Company of Canada (U.S.).

The Petitioner incorrectly lists his children, defendants, James Sampson, Gretchen Sampson, and Jeffrey Sampson as petitioners. However, Mr. Sampson's children never filed an appearance in this case and were not parties to the First Circuit appeal. They are not, as a matter of law, petitioners to this Court.

CORPORATE DISCLOSURE STATEMENT PURSUANT TO RULE 29.6

The Respondent, Sun Life Assurance Company of Canada, is a wholly owned subsidiary of a publicly held company, Sun Life Financial Inc.

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STATEMENT OF THE CASE

This is an action for interpleader to resolve a dispute over the proceeds of a group life insurance policy (the "Policy") provided to the late Dianne Sampson ("Mrs. Sampson") by her employer as part of its employee welfare benefit plan. The life insurance benefits were insured by Sun Life Assurance Company of Canada ("Sun Life").

On December 2, 1991, Mrs. Sampson completed an enrollment card naming her husband, Francis J. Sampson, Jr., ("Mr. Sampson") as the primary beneficiary, and their three children, as contingent beneficiaries. Eleven days later, Mrs. Sampson completed a new enrollment card listing Mr. Sampson, and their three children, defendants, Gretchen C. Sampson ("Gretchen"), James F. Sampson ("James"), and Jeffrey S. Sampson ("Jeffrey") all as primary beneficiaries with no contingent beneficiaries.

Mrs. Sampson died on December 26, 2005. Mr. Sampson submitted a claim for the proceeds of the Policy on December 29, 2005. Sun Life informed Mrs. Sampson's employer that pursuant to her election, Mr. Sampson was only entitled to one quarter of the proceeds and provided claim forms for each of Mrs. Sampson's children.

Mr. Sampson contested the validity of this designation claiming that it was inconsistent with how his wife set up the rest of her estate and that her intent had been to make the children contingent beneficiaries. Mr. Sampson further stated that his

children agreed he should receive all of the proceeds and would be willing to sign releases. Mr. Sampson further stated that he and his children would sue Sun Life if Sun Life did not make full payment to him.

Sun Life agreed to pay Mr. Sampson the remaining proceeds of the Policy upon receipt of signed releases from each of his children. Sun Life provided Mr. Sampson with its standard release for his children to sign. The release covered "all past, present and future claims of any nature whatsoever under said Group Policy Number 90638-G-027-37-8414 on the life of Diane Sampson."

Despite Mr. Sampson's insistence that his children agreed that he should receive the entire proceeds from the Policy, he refused to have his children sign the release provided by Sun Life claiming it was too broad. Sun Life wrote to the children asking them to sign the release, but they did not respond.

Sun Life attempted several times to explain its position to Mr. Sampson and resolve this dispute short of litigation. In a letter dated March 8, 2006, Mr. Sampson again demanded payment and implied that his children would not sign the releases as drafted by Sun Life and that Sun Life "might very well find [itself] in the position of having to pay all of the claims." In addition, Mr. Sampson told Sun Life to "sue if you wish."

After attempting to reach a resolution of this dispute to no avail, Sun Life filed a complaint for interpleader in the Norfolk Superior Court on June 7,

2006. After the Summons and Complaint were served, counsel for Sun Life was contacted by Attorney Kristopher S. Stephani, Mr. Sampson's first attorney, about potential settlement. Sun Life reiterated to Attorney Stephani the need for releases from Mr. Sampson's children in order to disburse the funds to Mr. Sampson and informed Attorney Stephani that it would be seeking fees in the interpleader action.

In a letter dated June 27, 2006, Attorney Stephani told Sun Life that the language "all past, present and future claims" was "entirely too broad" of a release. In addition, Attorney Stephani told Sun Life that Mr. Sampson was unwilling to pay any attorneys fees associated with having to bring the interpleader action. On June 28, 2006, Attorney Stephani sent a letter to counsel for Sun Life with proposed alternative release language, and stated "[i]f it is acceptable, I will present it to my client." It is clear from the June 28, 2006 letter that at the time neither Sun Life nor Mr. Sampson had reviewed the language or agreed to it. Attorney Stephani also requested documentation showing Sun Life's fees to date, which Sun Life provided.

Shortly thereafter Attorney Stephani informed Sun Life that he was no longer representing Mr. Sampson. At no point did Sun Life agree to the release language proposed by Attorney Stephani on June 28, 2006. Moreover, at no point did Mr. Sampson ever convey to Sun Life that the proposed language was acceptable to Mr. Sampson.

Recognizing that the insurance policy was governed by the Employee Retirement Income Security Act, 28 U.S.C. §1001 et seq. ("ERISA") and that the action had been erroneously filed in state court, Sun Life voluntarily dismissed the state court action and refiled this complaint for interpleader, along with a Motion to Deposit the Proceeds Into Court ("Motion to Deposit") with the United States District Court for the District of Massachusetts.[1]

Despite having been served with the Summons and Complaint, none of the defendants filed a notice of appearance or a timely answer. The District Court entered defaults as to all defendants. Once its Motion to Deposit was granted, Sun Life deposited the proceeds with the District Court and filed its Motion for Judgment on the Pleadings and Attorneys Fees ("Motion for Judgment") on February 27, 2007. In the Motion for Judgment, Sun Life requested that the District Court discharge it from any further liability under the Policy and award attorneys fees and costs incurred by the interpleader action.

In May 2007, a year after the filing of this action, two new attorneys for Mr. Sampson filed an appearance and moved to remove the default and file an answer. The Motion was granted, and on June 5, 2007, counsel for Mr. Sampson filed his answer to the amended complaint. In his answer, Mr. Sampson

---

[1] Sun Life did not request fees associated with the re-filing of the case in federal court.

claimed that he was entitled to payment of the entire proceeds of the Policy. Mr. Sampson's counsel did not assert any counterclaims against Sun Life, and consistent with their failure to oppose Sun Life's Motion to Deposit, did not contest the filing of the interpleader action. Mr. Sampson did not file an opposition to Sun Life's Motion for Judgment. No other defendant has ever appeared, sought removal of the default, or filed an answer.

On or about July 23, 2007, the parties, through their counsel, conferred with respect to filing a Joint Statement for the upcoming Scheduling Conference. The District Court's notice of the Scheduling Conference stated: "Counsel should be prepared to argue any pending motions." Sun Life stated in its portion of the Joint Statement that its Motion for Judgment was still pending before the District Court and no opposition had been filed.

At the Scheduling Conference on August 3, 2007, the District Court heard argument on Sun Life's Motion for Judgment. At the conference, Mr. Sampson was represented by two attorneys. At no point during this hearing did either counsel for Mr. Sampson object to the District Court hearing argument on the Motion for Judgment. At no point during this hearing did counsel for Mr. Sampson state that he believed that the Motion for Judgment was rendered moot because he had filed a Motion to Remove the Default and an Answer. Instead, counsel for Mr. Sampson verbally opposed the Motion for Judgment and represented to the District Court that he believed the

issue of attorneys fees might be resolved between the parties. The District Court gave the parties one week to reach a resolution before the District Court would issue a decision on Sun Life's Motion for Judgment. At no time during the hearing did counsel for Mr. Sampson request leave to file an untimely opposition or inform the District Court of his intent to do so.

On August 8, 2007, counsel for Mr. Sampson filed an opposition to Sun Life's Motion for Judgment. In the opposition, Mr. Sampson's attorney did not object to the granting of Sun Life's Motion for Judgment and agreed that Sun Life should be dismissed from the case. Their only opposition was "to the extent that [Sun Life] seeks an award of attorneys fees," on grounds that there was no dispute between the claimants and an agreement as to the form of release had been reached prior to the filing of the federal court action.

On September 10, 2007, taking into account Mr. Sampson's untimely opposition, the District Court granted Sun Life's Motion for Judgment and awarded Sun Life its attorneys fees.

On September 19, 2007, counsel for Mr. Sampson filed a Motion to Alter or Amend the Judgment, which was denied on February 7, 2008. On February 13, 2008, Sun Life moved to amend the judgment amount to include those fees incurred after the August 3, 2007 hearing. Counsel for Mr. Sampson did not oppose this motion and it was granted by the District Court on May 14, 2008.

Counsel for Mr. Sampson then filed a Notice of Appeal of the District Court's decision to the First Circuit. In his appeal, Mr. Sampson's attorneys argued that the interpleader action was improper because at the time the suit was filed (1) there were no competing claims to the insurance proceeds; and (2) all issues associated with the releases to the insurer had been resolved. The First Circuit found that Mr. Sampson had waived the argument with respect to competing claims because he did not challenge Sun Life's assertion that a dispute existed between the beneficiaries in his untimely answer or oppose the entry of judgment in favor of Sun Life. The First Circuit also found that the record refuted Mr. Sampson's assertion that the parties had reached agreement on the release before the federal interpleader action was filed. The First Circuit also rejected Mr. Sampson's argument that he was not given a full and fair opportunity to respond to Sun Life's Motion for Judgment, finding that the District Court made clear in advance that it would hear arguments on pending motions. The First Circuit affirmed the District Court's decision to allow Sun Life's Motion for Judgment and award of attorneys fees. Thereafter, Mr. Sampson retained new counsel, his now fourth attorney on this case, who filed a Petition for Rehearing on his behalf. The First Circuit denied that Petition on April 22, 2009.

REASONS FOR DENYING PETITION

I. MR. SAMPSON'S PETITION DOES NOT MEET THE CRITERIA FOR GRANTING CERTIORARI.

Mr. Sampson has failed to articulate a compelling reason that would invoke this Court's discretion to review this case. Pursuant to Sup. Ct. R. 10, only certain types of cases present the compelling reasons to make the case worthy of review by this Court. Mr. Sampson has not even attempted to argue that his case falls into any of these categories. The reason for this is simple. His Petition does not meet any of the criteria set forth in Rule 10.

A. Mr. Sampson's Procedural Argument Provides No Basis For Granting Certiorari.

Mr. Sampson first argues in his Petition that he was denied due process in the lower court because the District Court heard argument on Sun Life's Motion for Judgment at the Scheduling Conference and his attorneys were unprepared. While couched in constitutional language, there is absolutely no validity to a due process argument in this case. District courts have considerable discretion in deciding whether or not to allow oral argument on a dispositive motion. *Domegan v. Fair*, 859 F.2d 1059, 1065 (1st Cir. 1988). Moreover, due process does not encompass the right to oral argument on a motion.

Spark v. Catholic University of America, 510 F.2d 1277, 1280 (D.C. Cir. 1975). That his attorneys now claim to have been unprepared to argue the Motion for Judgment at the Scheduling Conference, does not amount to a due process violation especially where they knew or should have known that argument would take place, they did in fact argue in opposition, and they filed an untimely written opposition, which was taken into consideration by the District Court. This argument provides no justification for granting certiorari in this case.

B. Erroneous Factual Findings Are Not A Basis For Granting Certiorari.

Mr. Sampson claims that this Court should grant certiorari because the lower courts made various erroneous factual findings in granting Sun Life's Motion for Judgment and awarding Sun Life its attorneys fees. Pursuant to Sup. Ct. R. 10, "[a] petition for certiorari is rarely granted when the asserted error consists of erroneous factual findings or misapplication of a properly stated rule of law." Mr. Sampson claims that the lower courts erred by making the factual findings that (1) an actual dispute existed between the beneficiaries; (2) Sun Life was a disinterested stakeholder; and (3) the language of a release was agreed upon prior to the filing of this interpleader action. All of these errors, even if they were valid, are erroneous factual findings that do not warrant the granting of certiorari. Mr. Sampson does

not claim that the lower courts applied an incorrect standard of law or that the District Court did not have the power to grant Sun Life's Motion for Judgment, but rather that the District Court came to the wrong conclusions based on the facts of this case. In other words, Mr. Sampson disagrees with the factual findings of the lower courts and is dissatisfied with the outcome. This is not an appropriate basis for granting certiorari.

II. MR. SAMPSON RECEIVED A HEARING ON SUN LIFE'S MOTION FOR JUDGMENT.

Mr. Sampson claims that he was denied due process because Sun Life's Motion for Judgment was rendered moot by his answer and he did not get a hearing to oppose Sun Life's Motion for Judgment. He claims that a procedural irregularity occurred because the hearing took place at the Scheduling Conference. The facts establish that not only did the District Court give Mr. Sampson a hearing, but it also took into consideration an untimely written opposition before rendering its decision. No procedural irregularity or violation of due process occurred here.

Mr. Sampson claims that Sun Life's Motion for Judgment, which was filed while he was in default, was rendered moot when the default was removed and his answer to the complaint was entered. There is no legal support for this position. Filing a Motion to Remove Default and an Answer does not render Sun Life's Motion for Judgment moot. A motion or case becomes moot when the controversy is no longer "live"

or the parties "lack a legal cognizable interest in the outcome." *Ortiz-Gonzalez v. Fonoviser*, 277 F.3d 59, 64 (1st Cir. 2002). Mr. Sampson does not cite a single case in support of his proposition that the filing of an answer in an interpleader action would render Sun Life's Motion for Judgment moot. In his answer, Mr. Sampson simply claimed to be entitled to the proceeds. This answer had no bearing on Sun Life's request to be discharged from further liability or an award of attorneys fees. That counsel for Mr. Sampson believed his answer rendered Sun Life's motion moot does not deprive the District Court of the jurisdiction to issue a decision on Sun Life's Motion for Judgment. It does not create a procedural irregularity warranting a reversal of the District Court's decision, let alone the grant of certiorari.

Sun Life's Motion for Judgment, which was filed on February 27, 2007, was still pending at the time of the Scheduling Conference on August 3, 2007. Mr. Sampson's attorneys should have been aware that Sun Life's Motion for Judgment was still pending based on Sun Life's portion of the Joint Statement. In preparation for the August 3, 2007 Scheduling Conference, the parties conferred with respect to preparing a Joint Statement for the District Court. Sun Life stated in its portion of the statement that the Motion for Judgment was still pending. In addition, the District Court's notice of the Scheduling Conference stated that the parties should come prepared to argue all pending motions. Therefore, Mr. Sampson's attorneys were put on notice that Sun Life

did not consider its Motion for Judgment moot and that the District Court would hear argument on it at the Scheduling Conference. Moreover, if Mr. Sampson truly believed the Motion for Judgment was improper or unjustified his attorney should have filed an opposition after being allowed to file his answer. They did not.

Neither of Mr. Sampson's attorneys objected to the District Court's ability to rule on the Motion for Judgment at the Scheduling Conference or in Mr. Sampson's later filed opposition. At the Scheduling Conference on August 7, 2007, the District Court asked the parties to give an explanation of the procedural history of this case. Each side provided the District Court with their version of the history of this case. Judge Gorton told both sides that he was going to issue a decision on Sun Life's Motion for Judgment unless the parties could resolve the dispute before Friday, August 10, 2007. At no point during this conference did Mr. Sampson's counsel object to the District Court's authority to do so or raise the issue of mootness.

Mr. Sampson was not deprived of a hearing to respond to Sun Life's Motion for Judgment. Two lawyers were present on his behalf at the Scheduling Conference and opposed Sun Life's Motion for Judgment. Neither complained that they were unprepared to argue. Then after hearing, counsel for Mr. Sampson filed an opposition to Sun Life's Motion for Judgment. Despite the fact that it was five months overdue and not filed until after the District

Court had heard oral argument, the District Court took Mr. Sampson's arguments into consideration in rendering its decision. See *Perry v. Wolaver*, 506 F.3d 48, 56 n.10 (1st Cir. 2007) (recognizing that it is within the District Court's discretion to excuse late filings). Therefore, even if Mr. Sampson's counsel mistakenly believed that Sun Life's Motion for Judgment had been rendered moot, he suffered no prejudice because he was provided an opportunity to oppose Sun Life's Motion for Judgment, which was taken into consideration by the District Court. In addition, he received a hearing and an opportunity to submit a written opposition, which was considered by the District Court. As stated by the First Circuit in footnote 2 of its decision:

> The record directly refutes Sampson's procedural argument that he was not given a fair opportunity to respond to the fees request. Sampson argues that he was "ambushed" at the August 3, 2007 scheduling conference when the district court, to his surprise, heard argument on Sun Life's motion for attorneys' fees. Yet the district court made clear in advance that it would hear the parties' arguments on the fees issue at that scheduling conference. Indeed, the district court's notice of the scheduling conference stated (in bold, underlined font): "Counsel should be prepared to argue any pending motions." The district court heard Sampson's argument regarding the award of fees at the scheduling conference and gave the parties a week to settle the case before

> issuing its ruling. And Sampson filed an opposition to Sun Life's motion for fees on August 9, 2007, which the district court acknowledged and considered in its September 10, 2007 memorandum and order awarding fees to Sun Life.

See App. at 6 n. 2.

Moreover, Mr. Sampson had the opportunity to appeal this decision to the First Circuit where he was again represented by counsel, who filed an appellate brief on his behalf. Even after the First Circuit issued its decision, Mr. Sampson had the opportunity to petition for rehearing, which he did, again represented by counsel. That the District Court and the First Circuit did not agree with Mr. Sampson's position does not create a procedural irregularity or deprive him of due process.

III. SUN LIFE'S ACTION FOR INTERPLEADER WAS APPROPRIATE.

Mr. Sampson argues in his Petition that Sun Life's invocation of the interpleader process was inappropriate because no dispute existed with respect to the distribution of the proceeds; Sun Life was not a disinterested stakeholder; and the parties had reached an agreement with respect to the release before the interpleader was filed. Contrary to Mr. Sampson's view of the facts, the lower courts found that Sun Life satisfied the necessary elements for invoking interpleader. Erroneous factual findings rarely form the basis for granting certiorari. Even if

they could, Mr. Sampson's view of the facts of this case is contradicted by the record.

The primary test for determining the propriety of an interpleader complaint and discharge of stakeholder is whether the stakeholder legitimately fears multiple vexation directed against a single fund. 7 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY K. KANE, FEDERAL PRACTICE AND PROCEDURE, §1704 (3d ed. 2001), citing *American Family Mut. Ins. Co. v. Roche*, 830 F.Supp. 1241, 1245 (D. Wis. 1993). The threat of possible multiple litigation – not necessarily the likelihood of duplicative liability – justifies resort to interpleader. See e.g., *Underwriters at Lloyd's v. Nichols*, 363 F.2d 357, 365 (8th Cir. 1966) (interpleader statute designed not only to protect stakeholders from multiple liability but also to save them from expense of multiple litigation).

A. A Dispute Existed Between The Beneficiaries From Their Refusal To Sign A Release.

The First Circuit found that because Mr. Sampson did not challenge Sun Life's assertion that a dispute existed between the beneficiaries in his untimely answer or oppose entry of judgment in favor of Sun Life before the District Court, that he could not raise this argument on appeal. The First Circuit further found that even if Mr. Sampson "had not waived the argument the Court committed no error in inferring that a dispute existed between the beneficiaries from their refusal to sign releases." *See* App. at 7.

At the time Sun Life filed this action, it had adverse claims to a single fund and a legitimate fear of multiple litigation. After review of Mr. Sampson's claim for the proceeds of the Policy, Sun Life determined that Mrs. Sampson's beneficiary designation card listed Mr. Sampson as well as his three children as primary beneficiaries. Sun Life informed Mr. Sampson of this through Mrs. Sampson's employer. Mr. Sampson contested the validity of her designation in writing. He claimed that his late wife intended to name the children as contingent beneficiaries and that all of the proceeds should be paid to him. He blamed Sun Life for a poorly drafted and confusing designation card and offered to have his children sign a release to this effect.

Sun Life tried on numerous occasions to obtain signed releases from Mr. Sampson's children. Despite his repeated claim that his children agreed that he should receive all of the proceeds, Mr. Sampson refused to have them sign the form release provided by Sun Life. None of Mrs. Sampson's children ever notified Sun Life that they were waiving their interest in the Policy, provided a signed release or contacted Sun Life in any manner. As the District Court properly concluded,

> [f]rom the perspective of Sun Life [] there is a dispute among potential beneficiaries because they are unwilling to sign a release for the full distribution of the proceeds. That reticence raises a reasonable inference that the children are not willing to disclaim their

> potential shares of the proceeds. The interpleader action was, therefore, necessary for Sun Life to avoid liability should any of [Mrs. Sampson's] children subsequently challenge the distribution to [Mr. Sampson].

See App. at 16-17.

Moreover, on at least two occasions Mr. Sampson himself recognized that Sun Life was potentially subject to multiple liability if it paid him all of the proceeds without a signed release. In his February 1, 2006 letter, after setting forth his belief that Mrs. Sampson intended to make her children contingent beneficiaries Mr. Sampson states "[i]f you choose to interpret it differently, you are subject to a claim by me. If not, you are subject to a claim by my children." Then on March 8, 2006, Mr. Sampson stated in a letter to Sun Life "you might very well find yourself in the position of having to pay all of the claims, all because your company could not figure out how to write an unambiguous form." Sun Life was clearly faced with adverse claims and was justified in concluding that a dispute existed between the beneficiaries.

B. Sun Life Was A Disinterested Stakeholder.

Mr. Sampson claims that Sun Life was not a disinterested stakeholder because this interpleader action was brought as a pretext to recover attorneys

fees. Nothing could be further from the facts. Before any litigation was filed, Sun Life attempted for over four months to convince Mr. Sampson and his children to sign a standard form release that would allow Sun Life to pay Mr. Sampson the proceeds of the Policy as he requested and still protect Sun Life from any further liability under the Policy. Although Mr. Sampson refused, claiming that the release was too broad, Sun Life's standard from release was appropriately limited to claims under the Policy on the life of Mrs. Sampson. It was not until Mr. Sampson refused for the third time to sign the release and told Sun Life "please do not delay your court action," that Sun Life filed a complaint for interpleader.

In addition, Mr. Sampson claims that any confusion over who should receive the proceeds was the result of a poorly drafted enrollment card. While the card was drafted by Sun Life, this was a self-administered plan. As such, Mrs. Sampson's employer handled the enrollment and maintained the designation cards. Sun Life received the card for the first time when Mrs. Sampson passed away. To the extent that her designation was confusing, Sun Life was not in a position to correct this problem before Mr. Sampson submitted his claim.

C. The Parties Had Not Agreed Upon A Release Before Sun Life Filed Its Interpleader Action In Federal Court.

Mr. Sampson claims that the parties had reached an agreement on the language of the release and that the only remaining dispute was Sun Life's request for attorneys fees. Again, the facts contradict this claim.

Mr. Sampson's first attorney, Kristopher Stephani did contact Sun Life and propose alternative release language, however, no agreement was ever reached. In his June 28, 2006 letter, Attorney Stephani proposed alternative language and stated, "[i]f it is acceptable, I will present it to my client." This makes it clear that when he offered alternative language neither Sun Life nor Mr. Sampson had approved it. In this same letter Attorney Stephani asked for Sun Life's position on attorneys fees. In response, Sun Life provided Attorney Stephani with the amount of fees it had incurred in filing the state court action and provided him with an itemized statement of these fees. There was no other communication with Mr. Stephani regarding settlement. The next communication from Attorney Stephani was to state that he no longer represented Mr. Sampson.

As the First Circuit properly concluded:

> To the extent Sampson is now arguing that the release issue had been resolved before the federal interpleader action had been filed, the record refutes this assertion. On June 28, 2006, Sampson's attorney merely

> proposed language for the release that he would present to his client if Sun Life found it acceptable. Sun Life never agreed to this language, and the record does not indicate that Sampson himself ever approved the proposed language. Indeed, the next communication Sun Life received from Sampson's attorney was a notice that he was no longer representing Sampson. No releases were ever signed, and the issue was plainly not resolved before Sun Life brought this federal interpleader action.

See App. at 7-8.

Sun Life filed an appropriate Complaint for Interpleader. That Mr. Sampson disagrees with the lower court's factual finding in this regard does not form the basis for a grant of certiorari.

CONCLUSION

For all of the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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